

A. G. Contract No. KR901498TRD
ECS File: JPA-90-93
Project: US-89
Section: Marina/Cortez Streets
Funding: State Eng. Contingency

INTERGOVERNMENTAL AGREEMENT
AMONG
THE STATE OF ARIZONA,
CITY OF PRESCOTT,
AND
ENIGMA PROPERTIES, an
Arizona General Partnership

THIS AGREEMENT is entered into 10 September 1990,
pursuant to Arizona Revised Statutes, Sections 11-951 through
11-954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and the
CITY OF PRESCOTT, acting by and through its City Council (the
"City") and ENIGMA PROPERTIES, an Arizona General Partnership,
acting by and through its Managing General Partner, WESSEX
DEVELOPMENT COMPANY, an Arizona Corporation, (the "Enigma
Properties").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The City is empowered by Arizona Revised Statutes
Section 48-572 and City Charter Article 1, Section 3 to enter
into this agreement and has by resolution, a copy of which is
attached hereto and made a part hereof, resolved to enter into
this agreement and has authorized the undersigned to execute
this agreement on behalf of the City.

3. Enigma Properties is empowered to enter into this
agreement and has by resolution, a copy of which is attached
hereto and made a part hereof, resolved to enter into this
agreement and has authorized the undersigned to execute this
agreement on behalf of the Partnership.

NO. <u>15125</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>9/10/90</u>
<u>Jim Shumway</u> Secretary of State
By <u>Vinny V. Greenwald</u>

4. The State, the City and Enigma Properties desire to construct improvements to US-89 (Sheldon Street) in the City, to include right-of-way acquisition, turn lane improvements, a traffic signal, drainage improvements, utility relocation, re-striping and associated work, at an estimated cost of \$240,000.00, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. Enigma Properties will:

a. Provide plans, specifications and all such other documents required for construction bidding and construction. Incorporate State and City review comments.

b. Identify and define any additional required right-of-way for the Project.

c. Obtain a State permit for construction, and call for bids and award one or more construction contracts for the Project. Administer same and make all payments to the contractor. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to Enigma Properties.

d. Participate jointly and equally with the State and the City in the costs of the Project up to a total cost of \$240,000.00; and, be responsible for reasonable and direct costs exceeding \$240,000.00.

e. Invoice the State and the City for their share of the Project costs as necessary to amortize the Project, but no more often than monthly, in amounts not to exceed \$80,000.00, respectively.

2. The State will:

a. Review design documents and provide comments as appropriate.

b. Participate jointly and equally with the City and Enigma Properties in the reasonable and direct costs of the right-of-way, design and construction of the Project on US-89 (Sheldon Street) between Alarcon Street and Montezuma Street in an amount of one third of the actual cost, but not to exceed \$80,000.00. Reimburse Enigma Properties within thirty (30) days after receipt and approval of invoices.

c. Be responsible for re-striping Sheldon Street to provide for a left turn lane at Marina Street and for a left turn lane between Marina Street and Cortez Street, the cost of which is to be applied towards the State's share of the Project.

d. Enter into such other agreements necessary to provide for maintenance and electrical energy to the traffic signal.

e. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.

f. Upon completion and acceptance of the Project by the City and the State, provide maintenance inside the State's right-of-way, except for sidewalks.

3. The City will:

a. Review design documents and provide comments as appropriate.

b. Participate jointly and equally with the State and Enigma Properties in the reasonable and direct costs of the right-of-way, design, and construction of the Project on US-89 (Sheldon Street) between Alarcon Street and Montezuma Street in an amount of one third of the actual cost, but not to exceed \$80,000.00. Reimburse Enigma Properties within thirty (30) days after receipt and approval of invoices.

c. Acquire any additional required right-of-way for the Project, and convey it to the State prior to completion and acceptance of the Project.

d. Enter into such other agreements necessary to provide for maintenance and electrical energy to the traffic signal.

e. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the City.

e. Upon completion and acceptance, provide maintenance to the Project outside the State's right-of-way, and to any sidewalks which may be within the State's right-of-way.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in force and effect until completion of said Project; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the award of a Project contract, upon thirty (30) days written notice to the other parties.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 34-221 (G) and 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518 (B) and (C).

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Room 118E
Phoenix, AZ 85007

City of Prescott
City Manager
201 S. Cortez
Prescott, AZ 86301

Enigma Properties
c/o Wessex Development Company
2222 E. Camelback Road # 122
Phoenix, AZ 85016

7. Attached hereto and incorporated herein is a copy of the written determination of the City's and the State's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement
the day and year first above written.

CITY OF PRESCOTT

STATE OF ARIZONA
Department of Transportation

By Robert Morgan
ROBERT MORGAN
Mayor

By Robert P. Mickelson
ROBERT P. MICKELSON
Deputy State Engineer

Attest:

By Marie L. Watson
City Clerk
Title #90-91

ENIGMA PROPERTIES,
an Arizona General Partnership
By: Wessex Development Company,
an Arizona Corporation
The Managing General Partner

By Bruce O. Utterback
BRUCE O. UTTERBACK
President

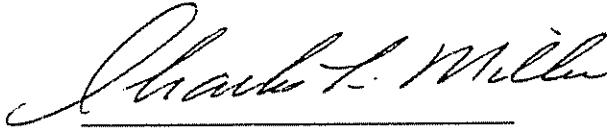
Attest:

By Shirley B. Lewis
Assistant Secretary
Title

RESOLUTION

BE IT RESOLVED on this 2nd day of July 1990, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Prescott and Enigma Properties for the purpose of defining responsibilities for constructing intersection improvements to US-89 in the City of Prescott.

Therefore, authorization is hereby granted to draft said agreements which, upon completion, shall be submitted for approval and execution by the Deputy State Engineer.

A handwritten signature in cursive script, reading "Charles L. Miller". The signature is written in dark ink and is positioned above a horizontal line.

CHARLES L. MILLER, Director
Arizona Department of
Transportation

PARTNERSHIP RESOLUTION

The undersigned, constituting all of the partners of ENIGMA PROPERTIES, an Arizona general partnership (the "Partnership"), do hereby authorize WESSEX DEVELOPMENT COMPANY, an Arizona Corporation, Bruce O. Utterback (the "Authorized Partner") to execute on behalf of said Partnership any and all documents, instruments and agreements as the Authorized Partner may deem necessary or advisable relating to the consummation and completion of the transaction respecting the construction of improvements to US-89 (Sheldon Street) and traffic signalization at Marina and Sheldon as more specifically defined within Agreement No. JPA 90-93, an Intergovernmental Agreement among the State of Arizona, acting by and through its Department of Transportation (the "State") and the City of Prescott, acting by and through its City Council (the "City") and Enigma Properties, an Arizona general partnership acting by and through its Managing General Partner, Wessex Development Company, an Arizona Corporation, (the "Enigma Properties").

As to third parties relying upon this authorization, the signature of the Authorized Partner shall be sufficient to bind the Partnership, and its partners, concerning such documents, instruments and agreements without further approval, authorization or consent of the partners.

DATED this 13th day of July, 1990.

SAINT LAWRENCE HOLDING
COMPANY, a Delaware
corporation

By Stanley F. English
Stanley F. English
Its: President

By Ward Noble
Ward Noble
Its: Vice President

WESSEX VENTURE GROUP LIMITED
PARTNERSHIP, an Arizona
limited partnership
By Wessex Development Company,
an Arizona corporation, its
general partner

By Bruce O. Utterback
Bruce O. Utterback,
President

By John C. Wilson
John C. Wilson,
Secretary

WESSEX DEVELOPMENT COMPANY,
an Arizona corporation

By Bruce O. Utterback
Bruce O. Utterback,
President

By John C. Wilson
John C. Wilson,
Secretary

JPA 90-93

APPROVAL OF THE PRESCOTT CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, ENIGMA PROPERTIES, and the CITY OF PRESCOTT and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 16th day of AUGUST, 1990.

EUL M. VAN RYSEN

City Attorney

RESOLUTION NO. 2325

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF PRESCOTT, THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, AND ENIGMA PROPERTIES, AN ARIZONA GENERAL PARTNERSHIP, PURSUANT TO PRESCOTT CITY CHARTER AND ARIZONA REVISED STATUTES, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ALL STEPS DEEMED NECESSARY TO ACCOMPLISH THE ABOVE.

WHEREAS, the State, the City and Enigma Properties desire to construct improvements to U.S. Highway 89 (Sheldon Street) in the City of Prescott, to include right-of-way acquisition, turn lane improvements, a traffic signal, drainage improvements, utility relocation, re-striping and associated work, at an estimated cost of \$240,000.00; and


WHEREAS, the City and Enigma Properties are desirous of traffic signalization at the intersection of U.S. Highway 89 (Sheldon Street) and Marina Street; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

THAT, the Intergovernmental Agreement between the State of Arizona, Department of Transportation, the City of Prescott, and Enigma Properties for the improvements to U.S. Highway 89, and installation of traffic signalization at Marina Street, is hereby approved by the Mayor and Council of the City of Prescott; and

THAT, the Mayor and staff are authorized to execute the necessary Intergovernmental Agreement, and the Mayor and staff are authorized to take any and all steps deemed necessary to accomplish the above.


PASSED, APPROVED and ADOPTED by the Mayor and Council of the City of Prescott, on this 14th day of AUGUST, 1990.


ROBERT C. MORGAN
Mayor of the City of Prescott

ATTEST:


MARIE L. WATSON
City Clerk

APPROVED AS TO FORM:


ELLEN VAN RIPER
Acting City Attorney



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A.G. Contract No. KR90-1498-TRD, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 4th day of September, 1990.

ROBERT K. CORBIN
Attorney General

A handwritten signature in black ink, appearing to read "James R. Redpath", is written over the printed name and title.

JAMES R. REDPATH
Chief Counsel
Transportation Division